BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
Universal Service Contribution Methodology	**)**	**WC Docket No. 06-122**
	)	

REPLY COMMENTS OF COMMISSIONER ANDREW G. PLACE PENNSYLVANIA PUBLIC UTILITY COMMISSION

I submit these Reply Comments with the Federal Communications Commission (FCC or Commission), in response to initial comments filed on the Notice of Proposed Rulemaking (NPRM) and the FCC proposal to establish a $11.42 billion cap on the federal universal service fund (USF) mechanism.[1] This annual amount is the total of the 2018 authorized budget figures for the corresponding federal USF mechanism programs.[2]

I note that I am expressing my own views and analysis in these Reply Comments. These do not reflect the views of the members of the Pa. PUC or those of its Staff. These Reply Comments should not be construed as binding on the Pa. PUC in any pending proceeding before it. Furthermore, these Reply Comments could change in response to later events including *ex parte* submissions, the review of other reply comments, or relevant regulatory developments at the state or federal level.

A. Introduction and Summary

The control of the financial outlays for any federal support mechanism and its component programs through a budgeting process is an obvious and readily quantifiable goal. However, this budgeting process must be measured against the evolving public interest purposes and the relative degree of success that such federal support mechanisms seek to achieve. The federal USF mechanism and its component programs are no exception. The Commission itself has formally established the availability of retail broadband access services as an inherent component of the universal service concept that is and needs to be supported through the federal USF mechanism programs. The FCC's proposed overall "hard cap" on the budget of the federal USF will create an artificial obstacle to maintaining and enhancing the universal service concept consistent with the applicable statutory

[1] *Universal Service Contribution Methodology: Notice of Proposed Rulemaking,* WC Docket No. 06-122, (FCC, Rel. May 31, 2019), Notice of Proposed Rulemaking, FCC 19-46, 84 Fed. Reg. 27570 (June 13, 2019) (NPRM).
[2] NPRM, ¶ 11 at 5.

principles and mandates in Sections 254(b) and 254(d) of the federal Communications Act of 1934 as amended (Act). 47 U.S.C. §§ 254(b) and (d).

I share many of the concerns that have already been expressed by numerous parties to this proceeding through their respective submission of initial comments. The proposed "hard cap" on the overall federal USF budget holds the potential of reducing needed support for the continuous deployment of broadband access networks and services. The "hard cap" can also create an artificial and unnecessary competition for funding resources between the constituent programs of the federal USF mechanism. Furthermore, the FCC has proceeded with the introduction of its "hard cap" budget proposal for the federal USF without first finalizing its long-standing proceeding on the reform of the federal USF contribution base and methodology in conjunction with the corresponding referral to the Federal-State Joint Board on Universal Service.

B. Discussion

I share the concerns that have been expressed in the initial comments by numerous parties that the proposed "hard cap" on the overall federal USF budget could damage the sufficiency and predictability of the USF mechanism, and the required support funding for *each* of its constituent programs. As the NTCA initial comments point out:

> Since 1996, each program of the USF has been considered separately, with discrete rules and budgets that are tailored to each branch. Each program has a unique application process for its constituent beneficiaries. More critical to the instant discussion is the fact that each program's budget has consistently been considered individually.

NTCA Comments at 6.

In a similar vein, WTA's legal analysis indicates that:

> Section 254 of the Communications Act of 1934, as amended ("the Act") gave the Commission express and explicit authority to establish each of the four separate USF programs, but delegated no clear or specific authority to the Commission to subject the four programs to a single comprehensive budget or to impose related trade-offs and prioritizations that can adversely impact the predictability and sufficiency of their separate funding with little or no notice or opportunity for comment.
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> * * *
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> Nowhere in Section 254 or elsewhere did Congress mention — much less authorize or require — that there could or should be a single comprehensive budget for the four separate programs or that the specific, predictable and sufficient funding required by the Act for each program should be interchanged

> with, affected by or dependent upon the funding of any one or more of the other three individual programs. There is no indication that Congress ever contemplated that the Commission's staff or the Universal Service Administrative Company ("USAC") would or could be given limited or unlimited authority to reduce the specific, predictable and sufficient funding of some or all of the authorized USF programs in the event that an overall USF budget were exceeded or projected to be exceeded, or to prioritize or shift funding among or between separate USF programs or mechanisms under such circumstances.

WTA Comments at 2-3.

In view of these comments and analyses, I agree "that any Commission action to intertwine these different programs via a comprehensive overall budget that shifts, trades off and re-prioritizes funding among" the federal USF constituent programs "requires a further delegation of authority from Congress."[3] I further observe that the potential shifting of funds among the federal USF mechanism programs most likely will require due process and appropriate notice and comment for potential "administrative changes" that have been suggested in the NPRM.[4]

I also agree with the initial comments expressing the position that the proposed establishment of an overall budgetary cap for the federal USF could lead to reductions in support funding in any of the constituent programs if the funding requirements for one of the programs exceeds its budgetary allocation. The NTCA comments are particularly instructive on how the Act's statutory directives for federal funding sufficiency and predictability for each of the federal USF programs could be undermined through the adoption of an overall budgetary cap:

> As noted above in the legal discussion, more than just the High-Cost program is at risk here, as an overall cap would threaten predictability for *each* of the programs because each will be at risk of losing funding as resources may be allocated differently amongst them from year-to-year. This is particularly hazardous because an increase in support to one program does not translate to a benefit to the other. Increased funding for schools and libraries, for example, would not promote the needs of rural health care if resources from the latter were reallocated to the former. Likewise, an increase in low-income funding would not benefit network deployment goals. Even worse, any demand increase (anticipated through forecasting or not) would have a "bleed over effect" into the other three programs — a program operating "in its own lane" and with demand in line with its budget (as set by the Commission to achieve a specific set of goals) would be subject to an unnecessary "shared" budget control that could have the effect of thwarting that program's overall mission. The resulting "collateral damage of insufficiency" would not only undermine that program's mission and the goals set

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[3] WTA Comments at 4.
[4] NPRM, ¶ 18 at 7.

> forth by a deliberative Commission process, but it would be a recipe for fostering a permanent sense of unpredictability across *all four USF programs*.

NTCA Comments at 11 (emphasis in the original).

Along generally similar lines AARP pointedly observes that an overall budgetary cap for the federal USF can lead to support funding distortions across the constituent program boundaries because of prevailing economic conditions:

> For example, if the LifeLine program were to exceed its budget due to an economic downturn, the vision of the *NPRM* would lead to cuts being made to other programs, such [as] Schools and Libraries, or High-Cost support, if that was the established priority. Or perhaps LifeLine itself would be cut if at the same time that LifeLine was at its cap other programs such as Schools and Libraries or Rural Healthcare were to exceed their capped amounts. The *NPRM's* policy of robbing Peter to pay Paul is the wrong policy and would undermine Universal Service objectives.

AARP Comments at 15.

I similarly agree with the AARP comments that any potential prioritization and cost-benefit analysis among the separate federal USF mechanism programs must include both quantifiable and qualitative measures of relevant costs and benefits.[5] Furthermore, I seriously doubt whether any "estimated improper payment rates"[6] would provide accurate and readily *comparable* measures of "cost-effectiveness" among the federal USF programs. For example, the "estimated improper payment rates" for federally supported Lifeline services often can be and are influenced by the existence of state-specific Lifeline programs and the corresponding policing that individual states exercise in that regard. Nor can the costs and benefits of deploying broadband network access facilities in rural America under the CAF program be readily compared with the quantitative and qualitative costs and benefits of Lifeline telecommunications and broadband access for eligible low-income individuals and households in an urban setting. The WTA comments demonstrate that there are "significant variances among the metrics used to evaluate different USF programs." WTA points out that the "CAF [Connect America Fund] Program measures effectiveness using telephone penetration rates as well as the number of residential, business and community anchor institutions that newly gain access to broadband service" while the "E-Rate Program measures its effectiveness on the basis of prices paid as a function of bandwidth and also as a function of the numbers of users in schools and libraries." WTA concludes

[5] AARP Comments at 17.
[6] NPRM, ¶ 19 at 8.

that "[e]ven though schools and libraries are community anchor institutions in many rural areas, comparing CAF Program metrics with E-Rate Program metrics is no more informative or useful than comparing apples with books."[7]

Various commenters have already pointed out that the currently available support funding through the federal USF mechanism and its constituent programs is already insufficient for the statutorily mandated purposes and goals.[8] As the demand for such support funding increases and the Commission is putting in place new initiatives (e.g., the Rural Digital Opportunity Fund NPRM involving $20.4 billion for the expansion of broadband access networks), the proposed adoption of an overall budgetary cap for the USF mechanism is clearly premature at this point.

The sufficiency and predictability of the federal USF mechanism cannot simply and solely rest on the adoption of an overall budgetary cap. In view of the increasing federal USF contribution assessment factors — and the associated burden that is placed on ordinary end-user consumers of telecommunications services — the Commission must proceed with the timely completion of its longstanding proceeding involving the reform of the federal USF contribution base and methodology, in conjunction with the associated referral to the Federal-State Joint Board on Universal Service. This has been repeatedly suggested over time by a number of interested stakeholders.[9] In short, as NASUCA and others advocate, there must be a holistic approach in ensuring the future sufficiency and predictability of the federal USF mechanism and for each of its constituent programs.[10]

C. Conclusion

The proposed adoption of an overall budgetary "hard cap" for the funding support resources of the federal USF mechanism is clearly premature. The potential adoption of such a cap does not ensure the statutorily mandated sufficiency and predictability of funding support for each of the federal USF constituent programs. Rather, it can lead to unwarranted competition among these programs and their respective constituencies with inimical results for the overall goal of maintaining and enhancing the redefined universal service concept. The Commission already has the flexibility, and it has already

[7] WTA Comments at 7-8 (citations omitted).
[8] National Association of Utility Consumer Advocates (NASUCA) Comments at 6 (citations omitted).
[9] *In re Petition of NTCA-The Rural Broadband Association and the United States Telecom Association for targeted Temporary Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contributions Obligations on Broadband Internet Access Transmission Services Pending Universal Fund Comprehensive Contribution Reform*, WC Docket Nos. 17-206 & 06-122, Comments of the Pennsylvania Public Utility Commission, September 13, 2017; *In re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.*, Reply Comments of the Pennsylvania Public Utility Commission, and Reply Comments of the State Members of the Federal State Joint Board on Universal Service, August 6, 2012.
[10] NASUCA Comments at 2-5; AARP Comments at 10-13.

exercised it, to address support funding issues that concern each of the constituent programs in the federal USF mechanism.

I also strongly recommend that the Commission undertake the much needed and long-awaited reform for the federal USF contribution base and methodology in conjunction with the corresponding referral to the Federal-State Joint Board on Universal Service. I thank the Commission for the opportunity to file these Reply Comments.

Respectfully submitted,

/s/ Andrew G. Place

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Date: August 27, 2019

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MOTION TO ACCEPT LATE-FILED REPLY COMMENTS OF COMMISSIONER ANDREW G. PLACE PENNSYLVANIA PUBLIC UTILITY COMMISSION

I respectfully submit this Motion to Accept Late-Filed Reply Comments because the preceding Reply Comments were due on August 26, 2019. These Reply Comments address the Commission's Notice of Proposed Rulemaking (NPRM), in which it proposed the establishment of an overall budgetary cap of the support funding of the federal universal service fund (USF) mechanism. As a Commissioner of the Pennsylvania Public Utility Commission I have a vital interest in the outcome of this proceeding since it can and will affect the available federal USF support funding that is available for the recipients of each of the four constituent USF programs in the Commonwealth of Pennsylvania. I believe that the record in this proceeding would benefit from the relevant submission.

I therefore ask that the Commission formally accept into the record of this proceeding the preceding and late-filed Reply Comments.

Respectfully submitted,

/s/ Andrew G. Place

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Date: August 27, 2019